

July 5, 1955

Attorney General

Louis C. Wyman

Honorable Lane Dwinell, Governor

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CONCORD, N.H.

Dear Governor:

You have inquired whether the position of official steward of the State Racing Commission is required to be classified by the Personnel Act of 1950. My answer to this question is in the negative. The official steward (R. L., c. 171, s. 12-b) is appointed by the Racing Commission by implication of section 12-b and regulation of the Commission. His compensation is also determined by the Commission and as the statute is presently written (R.L., c. 171, s. 6) required to be paid from the funds received under the provisions of that chapter rather than by the licensee. The New Hampshire Jockey Club.

The Personnel Act of 1950 (Laws 1950, c. 9) by section 18 sets up certain exemptions from the classified service. Subsection (f) excludes officers whose salaries are specified or provided by special statute. The position of official steward is created by special statute and his manner of payment and the amount of his compensation established by regulation thereunder. While the compensation of the official steward of the State Racing Commission, as an assistant of and to the Racing Commission, must come from the state's share of the take under section 6 as presently written, its amount is set by the Racing Commission. Furthermore, there are a number of officers and employees in other departments of the state whose positions are not classified under the Personnel Act of 1950 either because this has been the practice for many years, or because it has been accepted that their positions do not lend themselves to classification and specifications or because the Personnel Commission itself has been of the opinion that such personnel fell within one of the exemptions of section 18. It is also very clear from a reading of the Personnel Act of 1950 that the act of classification means a great deal more than just fixing a salary.

I recognize that the answer to your question is not open and shut. However, the General Court is now in session and in the event they wish that the position of official steward of the State Racing Commission should either be classified or that his compensation should be paid by the licensee, legislation to accomplish this could be enacted in short order. Until a different answer is supplied by legislation, it is my opinion that the position of official steward is not required to be classified under the Personnel Act of 1950 and that his compensation shall be set by the Racing Commission and paid out of the state's share of proceeds under chapter 171

Respectfully,

Louis C. Wyman
Attorney General

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